



Public Notice

**US ARMY CORPS
OF ENGINEERS
St. Louis District
Gateway to Excellence**

**Reply To:
U.S. Army Corps of Engineers
Attn: Regulatory Branch
1222 Spruce Street
St. Louis, Missouri 63103-2833**

Public Notice No.
P-2562
Public Notice Date
July 21, 2008

Expiration Date
August 11, 2008

Postmaster Please Post Conspicuously Until:

File Number: 2006-539

Interested parties are hereby notified that an application has been received for a Department of the Army Permit for certain work in waters of the United States, as described below and shown on the attached maps.

COMMENTS AND ADDITIONAL INFORMATION: All comments and/or requests for public hearing must reach this office no later than the expiration date of the Public Notice to become part of the record and be considered in the decision. Comments should be mailed to the following address:

U.S. Army Corps of Engineers
Regulatory Branch
1222 Spruce Street
St. Louis, Missouri 63103-2833
ATTN: Mr. Shawn Sullivan

APPLICANT: Fairview Heights Associates, L.P. Attn: Mr. Gary Grewe, 9109 Watson Road, 4th Floor, St. Louis, MO 63126. Phone (314) 962-6300.

AGENT: Pickett, Ray, & Silver, Inc., Attn: Mr. Jim Valleroy, 333 Mid Rivers Mall Drive, St. Peters, MO 63376. Phone (636) 397-1211.

LOCATION: The project site is located to the northeast of the intersection of Old Highway 141 and Allen Road in Fenton, Missouri (see attached map). More specifically, the site is situated in U.S. Survey 3011, Township 44 North, Range 05 East, in the City of Fenton, St. Louis County, Missouri.

PROJECT DESCRIPTION: Applicant seeks authorization to conduct site grading for purposes of constructing a commercial development. The jurisdictional waters, labeled on the attached map, consist of an unnamed intermittent tributary (labeled as Tributary A), an emergent wetland (labeled as Wetland A) and a forested wetland (labeled as Wetland B). Tributary A is a primary tributary to Fenton Creek, which is a primary tributary to the Meramec River. A portion of Tributary A and both wetlands are situated in a deed restricted area, and the basis for the deed restriction is discussed below.

The proposed development was previously placed onto Public Notice on June 30, 2006 and expired on July 20, 2006. As a result of the Public Notice process, the U.S. Fish and Wildlife Service contacted our office in September 7, 2006 and notified us that the project area previously had a complaint filed by the U.S. Environmental Protection Agency (USEPA) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). USEPA identified the project area as the Fenton Creek Dump Superfund Site. Based on the Phase I Environmental Site Assessment prepared on the applicant's behalf several trucking companies used a portion of the project area to dispose of paint sludge materials from automotive manufacturing activities during the 1950s and 1960s. Following discovery of the issue in the early 1990s, the U.S. Environmental Protection Agency (USEPA) conducted site investigative activities to determine the character and extent of contamination. Subsequently, the USEPA oversaw excavation and removal of paint wastes and associated debris from the site, restoration of the site, and post-removal ground water monitoring all of which was completed by March 2001. Based on the results of the post-removal sampling USEPA was satisfied with the effectiveness of the removal activities. In a court approved settlement agreement, the property owners at the time of the remediation work were required to deed restrict 5.7 acres of their land in association with the Natural Resource Damage Assessment claims by U.S. Fish and Wildlife Service (USFWS). The deed restriction was filed and recorded with the St. Louis County Recorder of Deeds Office on March 30, 1999 and consisted of a restricted area which totals 3.199 acres. The information provided by the USFWS delayed the processing of the Section 404 permit application so that the discrepancies between the deed restricted acres and covenants of the deed restriction could be further investigated. As of April 15, 2008, the USFWS and the permit applicant have met and the USFWS has tentatively agreed on the channel routing, design, and restoration discussed below.

As part of the project development, the applicant proposes to impact 901 linear feet of Tributary A by relocating the channel into a new 1,867 foot long trapezoidal channel. The applicant also proposes to impact Wetland A by filling the wetland to assist in construction of a building and associated parking and loading area. Wetland B is proposed to be impacted during grading activities for the Tributary A relocation. Total proposed impacts to Tributary A are 901 linear feet or 0.01 acre and 0.11 acre of wetlands.

A detailed alternatives analysis is required of the applicant to demonstrate that the proposal is the least environmentally damaging practicable alternative. The applicant has proposed to use the relocated channel as compensatory mitigation for both Section 404 Clean Water Act purposes and as a means to replace the deed restricted area that resulted from the natural resource damage assessment claims explained above.

LOCATION MAPS AND DRAWINGS: See attached maps.

ADDITIONAL INFORMATION: Additional information may be obtained by contacting Shawn Sullivan, Project Manager, U.S. Army Corps of Engineers, at (314) 331-8580. Your inquiries may also be sent by electronic facsimile to (314) 331-8741 or by e-mail to Shawn.F.Sullivan@usace.army.mil.

AUTHORITY: This permit will be issued or denied under the following: Section 404 of the Clean Water Act (33 U.S.C. 1344).

WATER QUALITY CERTIFICATION: The project plans have been submitted to the Missouri Department of Natural Resources, Water Protection Program for state certification of the proposed work in accordance with Section 401 of the Clean Water Act. The certification is requested as of the

date of this Public Notice, and if issued, will express the Agency's opinion that the proposed activities will not violate applicable water quality standards. Written comments concerning possible impacts to

waters of Missouri should be addressed to: Water Protection Program, Post Office Box 176, Jefferson City, Missouri 65102-0176, with a copy provided to the Corps of Engineers.

SECTION 404 (b)(1) EVALUATION: The impact of the activity on the public interest will be evaluated in accordance with the Environmental Protection Agency guidelines pursuant to Section 404 (b)(1) of the Clean Water Act.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the applicant's proposal. Any request for a public hearing shall state, with particularity, the reason for the hearing, and must be based on issues that would warrant additional public review.


ENDANGERED SPECIES: A preliminary determination, in compliance with the Endangered Species Act, as amended, has been made that the work that is proposed would not affect species designated as threatened or endangered, or adversely affect critical habitat. Therefore, no formal consultation request has been made to the United States Department of Interior, Fish and Wildlife Service. In order to complete our evaluation, comments are solicited from the Fish and Wildlife Service and other interested agencies and individuals through this Public Notice.

CULTURAL RESOURCES: The St. Louis District will evaluate information provided by the State Historic Preservation Officer and the public in response to this public notice and we may require a reconnaissance survey of the project area.

EVALUATION OF PROBABLE IMPACTS: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that may reasonably be expected to accrue from the described activity must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the activity described, will be considered including the cumulative effects. Among factors considered are: conservation; economics; aesthetics; general environmental concerns; wetlands; historic properties; fish and wildlife values; flood hazards; flood plain values; land use; navigation; shoreline erosion and accretion; recreation; water supply and conservation; water quality; energy needs; safety; food and fiber production; mineral needs; consideration of property ownership; and in general the needs and welfare of the people.

Solicitation of Comments From The Public: The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed activity. Any comments received will be considered by the U.S. Army Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to

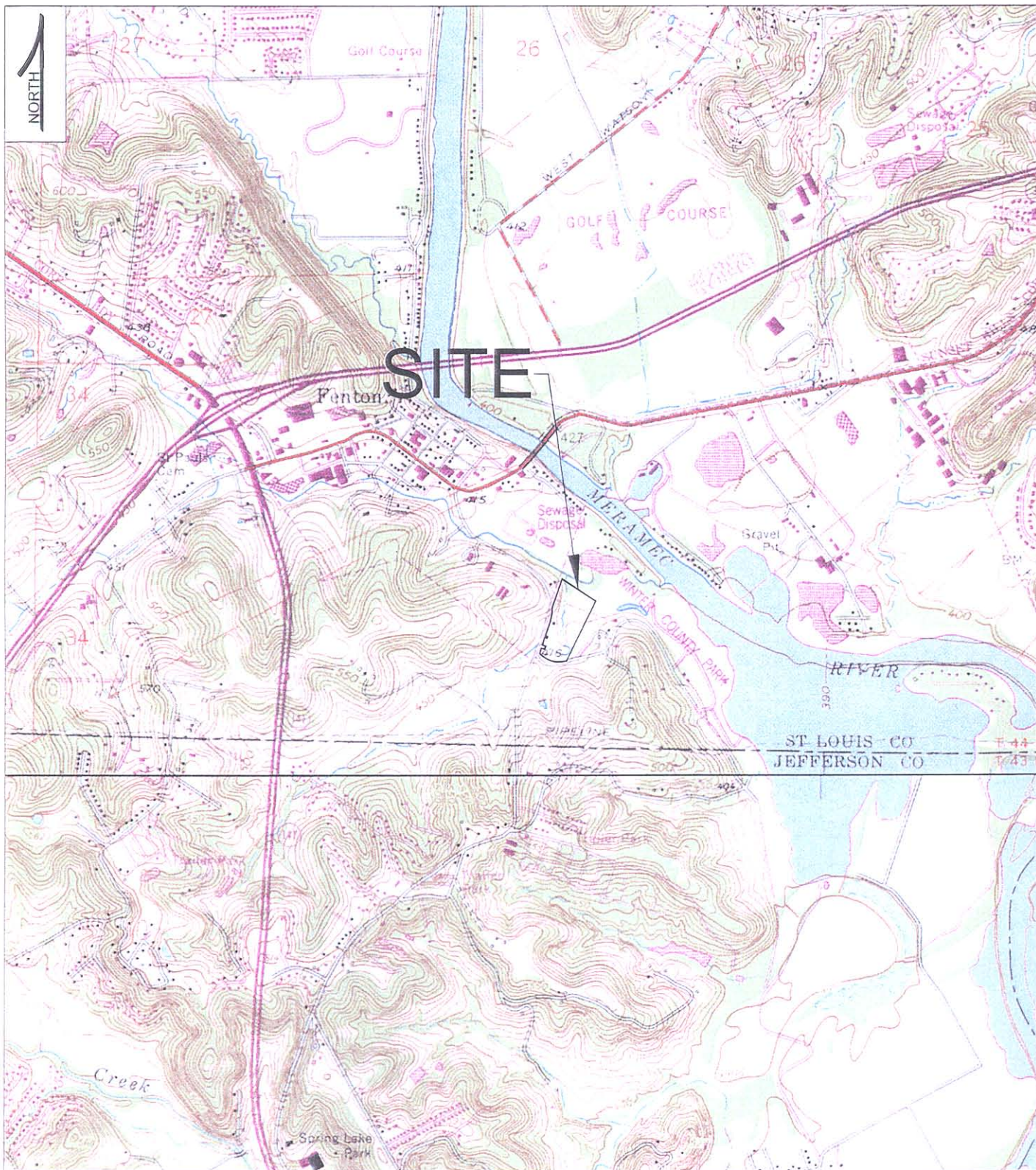
the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.


DANNY D. MCCLENDON
Chief, Regulatory Branch

Attachments

NOTICE TO POSTMASTERS:

It is requested that this notice be conspicuously and continually placed for 21 days from the date of this issuance of this notice.



Note:

USGS Topographical Maps: Kirkwood Quadrangle, Dated 1993; Maxville, Dated 1982.

PICKETT, RAY & SILVER INC.

CIVIL ENGINEERING, LAND SURVEYING,
AND NATURAL RESOURCES SERVICES

New Town

3320-1 Rue Royale 333 Mid Rivers Mall Drive 3027 W. Hwy 76, Suite B
St. Charles, MO 63301 St. Peters, MO 63376 Branson, Mo 65616

Phone (836) 397-1211 Fax (836) 397-1104
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GRAPHIC SCALE

1 inch = 2000ft.

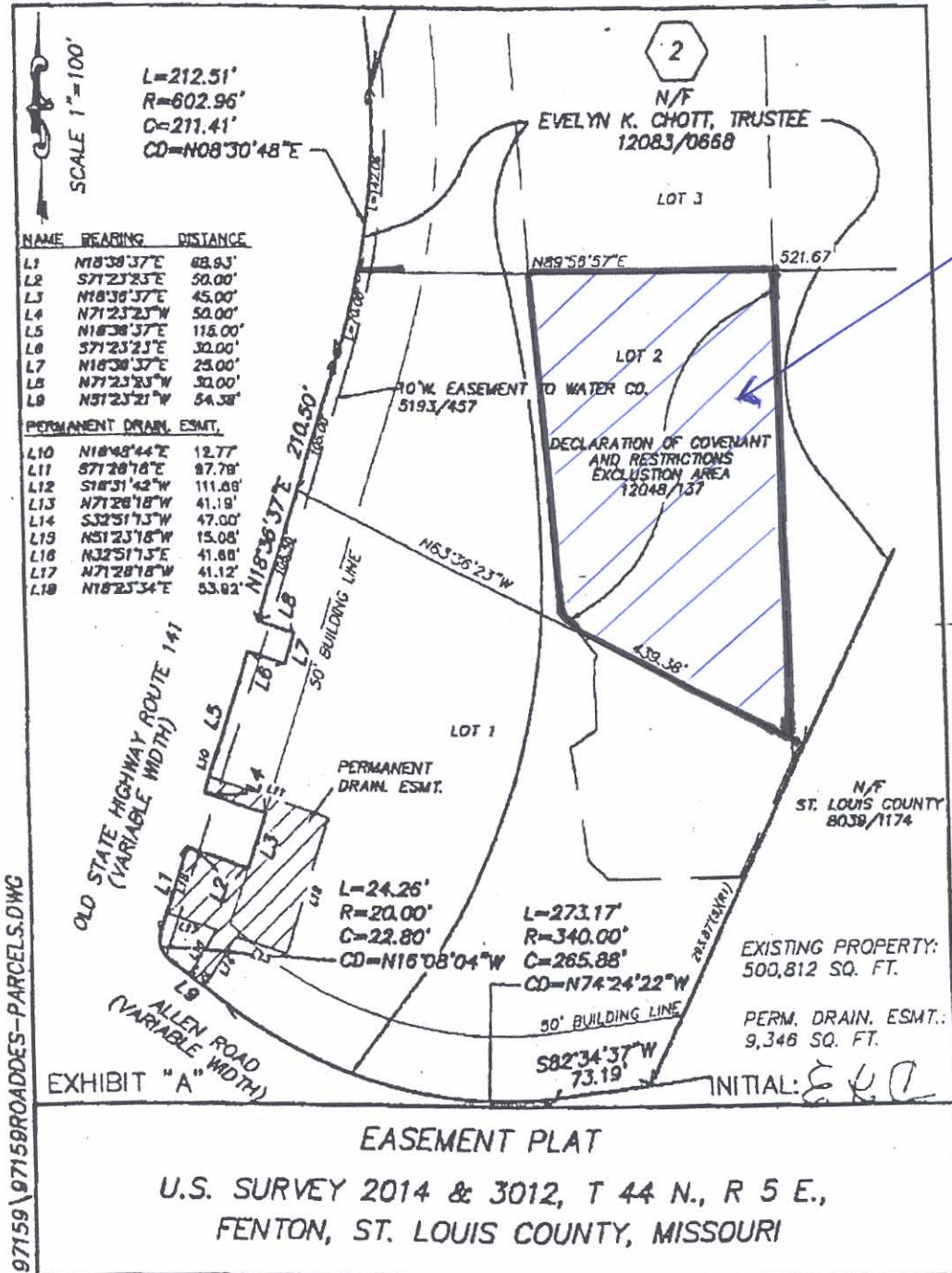
PRS Job Number: 97159.FHAS.00E

Drawn By: M.G.C.

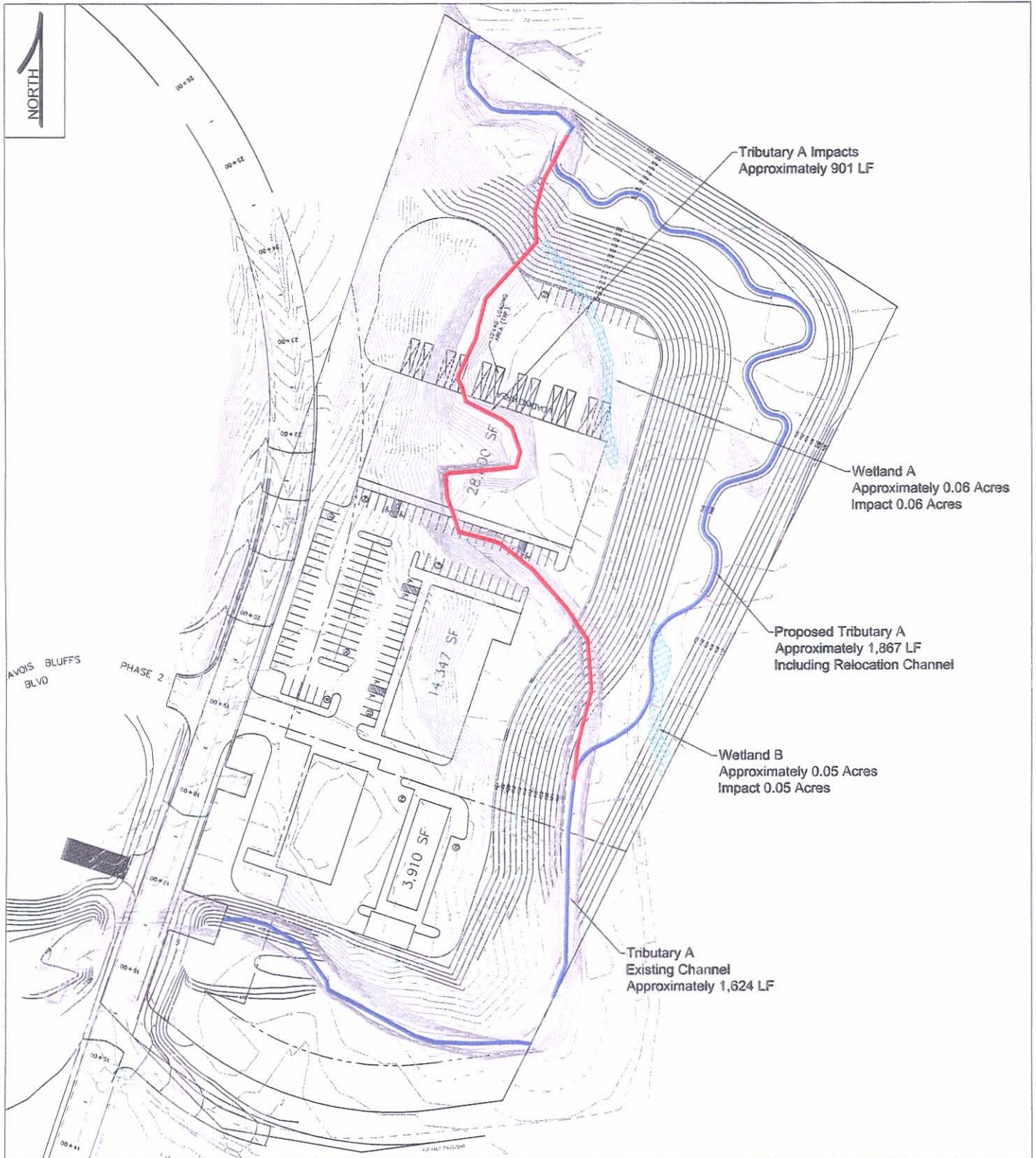
Date: 04-17-08

Checked By: J.C.V.

Date: 04-17-08

11-24-03
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P-24629-00

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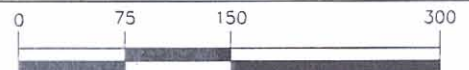
Legend: — Approximate Location of Tributary Impacts. — Approximate Location of Proposed Channel. ■ Approximate Location Wetlands.

PICKETT, RAY & SILVER INC.

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GRAPHIC SCALE
1 inch = 150ft.

PRS Job Number: 97159.FHAS.00E
Drawn By: M.G.C. Date: 04-17-08
Checked By: J.C.V. Date: 04-17-08